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**RE: Application No. 09/334,125; Filed June 15, 1999****By: Leithem et al.****Our Ref. 177079-00057**

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JAN 24 2008  
177079-00057IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Phyllis Leithem et al.  
Serial No. : 09/334,125  
Filed : June 15, 1999  
For : ABSORBENT PRODUCTS AND METHODS OF  
PREPARATION THEREOF  
Group Art Unit : 3761  
Examiner : J. F. Stephens

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I hereby certify that this correspondence is  
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on January 24, 2008

William J. Spatz, Reg. No. 30,108  
Name of Applicant, Assignee or Registered  
Representative

Signature

January 24, 2008

Date of Signature

REQUEST BY APPLICANTS FOR INTERFERENCE  
WITH PATENT UNDER 37 CFR §41.202

On November 30, 2007, a Notice of Allowance was issued in the referenced Application. However, as advised in the Request for Interference filed by Applicants on August 27, 2001, the allowed claims were, in all material respects, copied from U.S. Patent No. 5,766,159. Under the circumstances, it is believed that the application should be referred for a declaration of interference, which action is respectfully requested. The attached Request although styled under 37 CFR §1.607(a) conforms in substance to 37 CFR §41.202. Expedited action on this Request is requested in view of the February 29, 2008 deadline for payment of the Issue Fee for the application.

Respectfully submitted,

KRAMER LEVIN NAFTALIS & FRANKEL LLP  
Attorneys for Applicants

Dated: January 24, 2008

By:

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KLJ 2637397.1

JAN 24 2008  
PATENT  
177079-00057IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of : Phyllis Leithem et al.  
 Serial No. : 09/334,125  
 Filed : June 15, 1999  
 Title : ABSORBENT PRODUCTS AND  
 METHODS OF PREPARATION  
 THEREOF  
 Group Art Unit : 3761  
 Examiner : Dennis Ruhl

CERTIFICATE OF EXPRESS  
MAILING

I hereby certify that this correspondence, and Exhibits A-G attached hereto, is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on

Date: August 27, 2001

Express Mail No. 647406022

Name: Maria Corrado

Signature: [Signature]

Assistant Commissioner For Patents  
 Washington, D.C. 20231

37 CFR § 1.607(a)  
 REQUEST BY APPLICANTS FOR INTERFERENCE WITH PATENT

SIR:

Applicants seek an interference between the present application and an unexpired patent. The claims to be placed in interference are directed to methods of making a personal hygiene article with an absorbent core comprising specially treated wood fiber. In general, the invention relates to the discovery that it is advantageous to make the absorbent core of a personal hygiene article from wood fiber that is treated with a pH basic solution at relatively low temperatures and fluffed. Applicants disclosed this invention in the grandparent of the present application, which was filed in January of 1994. The inventors of the issued patent filed their application a year and a half later, in July of 1995. Applicants respectfully request that an interference be declared, and that applicants be declared the senior party.

This request for interference is related to a request for interference filed by applicants in Serial No. 09/863,585, which is a continuation of the present application.

The requirements of 37 CFR § 1.607(a) are satisfied as follows:

KLJ:2115981.1

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177079-00057**I. 37 CFR § 1.607(a)(1)**

Applicants seek the declaration of an interference between the present application ("Leithem '125 application") and U.S. Patent 5,766,159 to Martin et al. ("Martin '159 patent"). A copy of the Martin '159 patent is attached as "Exhibit A".

**II. 37 CFR § 1.607(a)(2)**

Applicants present the following Proposed Count 1:

Claim 1 of the Martin '159 patent

OR

Claim 61 of the Leithem '125 application.

Proposed Count 1 is a bifurcated count that includes as count alternatives the respective independent claims of the Martin '159 patent and the present application. For the convenience of the Examiner, a proposed form PTO-850 is attached as "Exhibit B". For the Examiner's convenience in filling out form PTO-850, a copy of Proposed Count 1 with a recital of the two alternative count claims is attached as "Exhibit C". A claim chart showing the correspondence between claim 1 of the Martin '159 patent and claim 61 of the Leithem '125 application is attached as "Exhibit D". As shown in Exhibit D, an interference is needed to resolve the priority of invention.

**III. 37 CFR § 1.607(a)(3)**

Claims 1-6 of the Martin '159 patent are identified as corresponding to Proposed Count 1. These are all of the claims of the Martin '159 patent.

**IV. 37 CFR § 1.607(a)(4)**

Claims 61 and 62 of the present application (the Leithem '125 application) are identified as corresponding to Proposed Count 1. These are the only claims now pending in the present application. A clean copy of these claims is attached as "Exhibit F".

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**A. Claims 1-6 of the Martin '159 Patent  
Correspond to Proposed Count 1**

Claim 1 of the Martin '159 patent corresponds exactly to Proposed Count 1. Claims 2-6 of the Martin '159 patent also correspond to Proposed Count 1 because: a) those claims depend from claim 1 of the Martin '159 patent, and b) the additional limitations defined by claims 2-6 do not make those claims separately patentable. In this regard, it is noted that claim 4 of the Martin '159 patent limits the strike-through acquisition re-wet weight of the sublayer material to "less than about 40 grams." This is not a patentable distinction because the Martin '159 patent reports that even untreated pulp had a re-wet weight of "38.0" grams. Martin '159 patent, Table 3, col. 9, line 53. Also, it is noted that claim 5 of the Martin '159 patent limits the pre-poured saturated drainage (PSD) capacity of the sublayer material to "greater than about 400 ml." This is not a patentable distinction because the Martin '159 patent reports that a PSD of "430 ml" was achieved even when the pulp was not treated with any base at all. Martin '159 patent, Table 1, col. 8, line 54.

**B. Claims 61 and 62 of the Leithem '125  
Application Correspond to Proposed Count 1**

Claim 61 of the Leithem '125 application corresponds exactly to Proposed Count 1. Claim 62 of the Leithem '125 application also corresponds to Proposed Count 1 because it depends from claim 61 and the additional limitations defined by claim 62 do not make that claim separately patentable.

**V. 37 CFR § 1.607(a)(5)**

The terms of the claims of the present application that are identified as corresponding to Proposed Count 1 (claims 61 and 62 of the Leithem '125 application) are applied to the disclosure of the present application as follows:

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Claim 61 Leithem '125 Application	Application of the Terms of the Claim to the Specification of the Leithem '125 Application
A method for making an absorbent composite useful for personal hygiene articles which comprises:	p. 1 ("use of modified pulps for absorbent products of household and hygienic uses such as diapers, incontinence and catamenial devices"); p. 7 ("While the above illustration has been for a diaper, other devices have been constructed in a similar manner.")
treating a wood fiber pulp containing wood fibers with a base	p. 5 ("Upon a cold caustic treatment of the pulp/fibers, these show improved properties."); p. 6 ("the improved properties are obtained regardless of the wood species which have been employed")
at a temperature ranging from 15° C. to about 60°C.	p. 4 "[b]y the term 'cold' it is meant a caustic treatment not to exceed 60°C but desirably at a temperature less than 50°C but preferably at a temperature between 15°C to 50°C"); application claim 1 ("treating a pulp at a temperature of up to about 60°C, in a suspension, with an alkali solution")
thereby forming a treated wood fiber pulp containing wood fibers;	p. 4 ("cold alkali extraction (CAE) of pulps such as preferably obtained from coniferous and deciduous trees result in fibers that have advantageously and unexpectedly improved absorption properties")
fluffing the treated wood fiber pulp to form an absorbent sublayer material comprised of fluffed base-treated wood pulp;	p. 14 ("converted by the end-user from the dried, sheeted pulp to a pad of 'fluffed' fibers by mechanical action"); p. 1 ("to produce cellulosic pulps having altered and novel fiber properties desirable for end-use applications for absorbent and fluff pulp products")
providing at least one fluid permeable topsheet layer	p. 2 ("[a]n 'acquisition' layer of proper characteristics and properties allows the liquid to pass quickly into the absorbent core"); or Figure 2, Item 11 (p. 6, "Item 11 is a thermally-bonded polypropylene coversheet, it is typically carded or spun.")
and at least one substantially fluid impermeable backsheet layer; and	p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16.")
interposing the sublayer material between the topsheet layer and the backsheet layer.	Figure 2 (see, item 14 interposed between items 11, 12 and 16); p. 6 ("Item 12 is an airlaid cellulose acquisition layer."); p. 7 ("the absorbent core is identified as 14"); p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16.")

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Claim 62 Leithem '125 Application	Application of the Terms of the Claim to the Specification of the Leithem '125 Application
The method of claim 61	(see above)
wherein the sublayer material contains from about 25 to about 100% by weight of treated cellulosic fiber pulp and from about 0 to about 75% by weight of unprocessed fibers.	p. 7 ("the modified pulps may be 100% of the improved pulps as constituent pulps in the product or may be used in the product in lesser quantities, i.e., used in various admixtures with other pulp, from about 100% to about 25%")

#### **VI. 37 CFR § 1.607(a)(6)**

37 CFR § 1.607(a)(6) is satisfied because, prior to the expiration of the one year period following the issue of the Martin '159 patent, at least one of the claims of the present application was for "substantially the same subject matter" as at least one claim of the Martin '159 patent. In particular, the Martin '159 patent issued on June 16, 1998 and claim 61 of the Leithem '125 application was added in a Preliminary Amendment filed on June 15, 1999. Claim 61 of the Leithem '125 application, as presented in that Preliminary Amendment, is compared to claim 1 of the Martin '159 patent in "Exhibit G". As shown in Exhibit G, the claim 61 that was presented in the June 15, 1999 Preliminary Amendment contains all of the material limitations of claim 1 of the Martin '159 patent.

#### **VII. Request For The Benefit Of The Filing Dates Of Applicants' Priority Applications**

Applicants claim priority under 35 U.S.C. § 120 based on U.S.S.N. 08/370,571 ("Leithem '571 application"), filed January 18, 1995, and U.S.S.N. 08/184,377 ("Leithem '377 application"), filed January 21, 1994, now abandoned.

Because the present application shares the same specification as the Leithem '571 application, claims 61 and 62 of the present application are also supported by the Leithem '571 application (see, Section V, supra). Thus, if an interference is declared based on Proposed Count 1, applicants will be entitled to at least the January 18, 1995 filing date of the Leithem

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'571 application. Because this date is before the July 6, 1995 filing date of the Martin '159 patent, applicants should be declared the senior party.

Applicants are also entitled to the January 21, 1994 filing date of the Leithem '377 application because claim 61 of the Leithem '125 application (which is included in Proposed Count 1) reads on at least one embodiment disclosed in the Leithem '377 application:

Claim 61, Leithem '125 Application	Embodiment of the Terms of the Claim in the Specification of the Leithem '377 Application
A method for making an absorbent composite useful for personal hygiene articles which comprises:	p. 1 ("use of modified pulps for absorbent products of household and hygienic uses such as diapers, incontinence and catamenial devices"); p. 7 ("While the above illustration has been for a diaper, other devices have been constructed in a similar manner.")
treating a wood fiber pulp containing wood fibers with a base	p. 5 ("Upon a cold caustic treatment of the pulp/fibers, these show improved properties."); p. 6 ("the improved properties are obtained regardless of the wood species which have been employed")
at a temperature ranging from 15° C. to about 60° C.	p. 14 "[b]y 'cold caustic extraction' (CCE) is meant the treatment of pulp at a temperature less than 40°C, preferably about 30°C")
thereby forming a treated wood fiber pulp containing wood fibers;	p. 4 ("cold caustic extraction (CCE) of pulps such as preferably obtained from coniferous and deciduous trees result in fibers that have advantageously and unexpectedly improved absorption properties")
fluffing the treated wood fiber pulp to form an absorbent sublayer material comprised of fluffed base-treated wood pulp;	p. 15 ("cold caustic treatment . . . is novel with respect to . . . absorbent core materials"); p. 26 ("[t]he absorbent core is a mixture of cellulose fiber, fluffed and air laid")
providing at least one fluid permeable topsheet layer	p. 2 ("[a]n 'acquisition' layer of proper characteristics and properties allows the liquid to pass quickly into the absorbent core"); or Figure 2, Item 11 (p. 7, "Item 11 is a thermally-bonded polypropylene coversheet, it is typically carded or spun.")
and at least one substantially fluid impermeable backsheet layer; and	p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16.")
interposing the sublayer material between the topsheet layer and the backsheet layer.	Figure 2 (see, item 14 interposed between items 11, 12 and 16); p. 7 ("Item 12 is an airlaid cellulose acquisition layer."); p. 7 ("the absorbent core is identified as 14"); p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16.")



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177079-00057**VIII. 37 CFR § 1.608**

37 CFR § 1.608 is not applicable because the effective filing date of the present application (which is at least as early as the January 18, 1995 filing date of the Leithem '571 application) precedes the July 6, 1995 filing date of the application that issued as the Martin '159 patent.

**IX. Proposed Form PTO-850**

For the convenience of the Examiner, a proposed form PTO-850 is attached as "Exhibit B".

\* \* \*

Should any questions arise, the Examiner is invited to telephone the attorneys for applicants at 212-715-9257 (William J. Spatz, Reg. No. 30,108) or 212-715-9472 (Louis H. Weinstein, Reg. No. 45,205).

Respectfully submitted,

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: 

William J. Spatz  
Reg. No. 30,108  
Louis H. Weinstein  
Reg. No. 45,205

August 27, 2001